



Billing Code: 3510-DS-P

DEPARTMENT OF COMMERCE

International Trade Administration

[A-570-863]

Honey from the People's Republic of China: Notice of Court Decision Not in Harmony with Final Determination of Sales at Less Than Fair Value and Notice of Amended Final Determination of Sales at Less Than Fair Value Pursuant to Court Decision

AGENCY: Import Administration, International Trade Administration, Department of Commerce

SUMMARY: On June 18, 2013, the United States Court of International Trade (CIT) sustained the Department of Commerce's (the Department's) final results of remand redetermination in which it determined that critical circumstances did not exist during the less than fair value investigation pursuant to the CIT's remand order in *Zhejiang Native Produce & Animal By-Products Import & Export Corp. v. United States*, Court No. 02-00057, Slip Op. 11-110 (September 6, 2011).¹ Consistent with the decision of the United States Court of Appeals for the Federal Circuit (Federal Circuit) in *Timken Co. v. United States*, 893 F.2d 337 (Fed. Cir. 1990) (*Timken*), as clarified by *Diamond Sawblades Mfrs. Coalition v. United States*, 626 F.3d 1374 (Fed. Cir. 2010) (*Diamond Sawblades*), the Department is notifying the public that the final CIT judgment in this case is not in harmony with the Department's *Notice of Final Determination of Sales at Less Than Fair Value; Honey from the People's Republic of China*, 66 FR 50608 (October 4, 2001) (*Final Determination*) and is amending its *Final Determination*.

EFFECTIVE DATE: [Insert date of publication in the *Federal Register*.]

FOR FURTHER INFORMATION CONTACT: John Drury or Angelica Mendoza, AD/CVD Operations, Office 7, Import Administration, International Trade Administration, U.S.

¹ See Final Results of Redetermination Pursuant to Court Remand *Zhejiang Native Produce & Animal By-Products Import & Export Corp., et al. v. United States* Court No. 02-00057 (March 22, 2012) (Remand Results).

Department of Commerce, 14th Street and Constitution Avenue, NW, Room 7850, Washington, DC 20230; telephone (202) 482-0195 or (202) 482-3019, respectively.

SUPPLEMENTARY INFORMATION:

Background

On March 22, 2013, the Department issued the Remand Results. The Department provided an extensive background of this case in its previous results of redetermination pursuant to remand.² In the Remand Results, the Department found that that importers did not know, or could not have known, that honey from the People's Republic of China was being sold at less than fair value, and that therefore no critical circumstances existed for any entity examined during the investigation.

On June 18, 2013, the CIT sustained the Department's Remand Results, stating that the Department's determination that critical circumstances did not exist was supported by substantial evidence and was in accordance with the law.³

Timken Notice

In its decision in *Timken*, 893 F.2d at 341, as clarified by *Diamond Sawblades*, the Federal Circuit held that, pursuant to section 516A(e) of the Tariff Act of 1930, as amended (the Act), the Department must publish a notice of a court decision that is not "in harmony" with a Department determination and must suspend liquidation of entries pending a "conclusive" court decision. The CIT's June 18, 2013, judgment in this case constitutes a final decision of that court that is not in harmony with the Department's *Final Determination*. This notice is published in fulfillment of the publication requirements of *Timken*. Accordingly, the Department will

² See *Zhejiang Native Produce & Animal By-Products Import & Export Corp., et al., v. United States*, Results of Redetermination Pursuant to Remand (December 8, 2010), at 2-8.

³ See *Zhejiang Native Produce & Animal By-Products Imp. & Exp. Corp. v. United States*, Court No. 02-00057, Slip Op. 13-76 (Ct. Int'l Trade June 18, 2013).

continue the suspension of liquidation of the subject merchandise pending the expiration of the period of appeal or, if appealed, pending a final and conclusive court decision.

Amended Final Less Than Fair Value Determination

Because there is now a final court decision with respect to this case, the Department amends its final less than fair value determination to reflect that critical circumstances did not exist for any company or entity in the investigation. In the event the CIT's ruling is not appealed or, if appealed, upheld by the Federal Circuit, the Department will instruct CBP to liquidate entries that were suspended, due to the original affirmative critical circumstances finding, without regard to antidumping duties, and to lift suspension of liquidation of such entries.⁴

This notice is issued and published in accordance with sections 516A(c)(1), 735(d), and 777(i)(1) of the Act.

Paul Piquado
Assistant Secretary
for Import Administration

June 28, 2013
Date

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⁴The Department does not intend to instruct CBP to liquidate any entries at issue that otherwise continue to be suspended pursuant to a separate injunction in another case.